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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

Kevin James Quinn,

Debtor.

James T. Duff,

Plaintiff

v.

Kevin James Quinn,

Defendant

Case No.: 2:18-bk-12286-NB

Adv. No.: 2:18-ap-01158-NB

Chapter: 7

**MEMORANDUM DECISION RE:
PLAINTIFF'S COMPLAINT OBJECTING
TO DEBTOR'S DISCHARGE UNDER 11
U.S.C. §§ 727(a)(3) AND (a)(4)(A)**

[No Hearing Held]

In this adversary proceeding, general unsecured creditor, James T. Duff ("Plaintiff"), objects to the discharge of debtor Kevin James Quinn ("Debtor") under 11 U.S.C. §§ 727(a)(3) and (a)(4).¹ The parties stipulated for trial to proceed by written record consisting of facts agreed to in the parties' Joint Pre-Trial Order, by deposition testimony, by Plaintiff's declaration, and exhibits lodged with the Court. Adv. Dkt. 45,

¹ Unless the context suggests otherwise, a "chapter" or "section" ("§") refers to the United States Bankruptcy Code, 11 U.S.C. § 101 et seq. (the "Code"), a "Rule" means the Federal Rules of Bankruptcy Procedure or other federal or local rule, and other terms have the meanings provided in the Code, Rules, and the parties' filed papers.

p.1:24-26 & 46, pp.1:27-2:1. The deadline to submit all written materials was December 10, 2020 (Dkt. 46, p.2:2-3), at which time this Bankruptcy Court deemed the matter fully submitted and under submission.

This Memorandum Decision denies Debtor his discharge under § 727(a)(4)(A) for the reasons set forth below.

1. BACKGROUND

a. The Bankruptcy Case

On March 1, 2018, Debtor filed his voluntary chapter 7 bankruptcy petition commencing this case. Concurrent with the petition, Debtor filed his Schedules and Statement of Financial Affairs (“SOFA”). *Id.* Dkt. 1. On September 7, 2018, the acting Chapter 7 Trustee (“Trustee”) filed a “Report of No Distribution.”

b. The Discharge Action

On May 24, 2018, Plaintiff timely initiated an adversary proceeding by filing a complaint (the “Complaint”) against Debtor seeking to deny Debtor his discharge under 11 U.S.C. §§ 727(a)(3) and (a)(4). Adv. Dkt. 1. In the Complaint, Plaintiff alleges, in relevant part, that he obtained a pre-petition judgment against Debtor in 2016 in the amount of \$42,924.75 (Complaint, ¶9) and that Debtor promised to pay the judgment on numerous occasions but only made a few payments prior to filing for bankruptcy. *Id.* ¶14. Plaintiff further alleges that Debtor understated his income and expenses in his bankruptcy schedules in order to hide alternative sources of income and assets. *Id.* ¶¶17, 22, 23.

Debtor filed an answer (“Answer”) with a blanket denial of all allegations set forth in the Complaint (Adv. Dkt. 5, p.2:4-6). On August 5, 2019, the parties submitted their Joint Pre-Trial Order (Adv. Dkt. 25) and trial was set to proceed on August 9, 2019. But the trial date was continued several times due to health and scheduling conflict issues (Adv. Dkt. 26, 30, 31, 33, 35, & 37). Because of the public health concerns created by COVID-19, among other things, the parties stipulated for trial to proceed by written record consisting of facts agreed to in the parties’ Joint Pre-Trial Order, by deposition

1 testimony, by Plaintiff's declaration, and exhibits lodged with the Court. Adv. Dkt. 45,
2 p. 1:24-26; Adv. Dkt. 46, pp. 1:27-2:1. The deadline to submit all written materials was
3 December 10, 2020. Dkt. 46, p. 2:2-3. On December 10, 2020, Plaintiff filed a pre-trial
4 brief (Adv. Dkt. 48) but did not submit any additional declarations or evidence. Debtor
5 did not submit any additional papers or evidence.

6 **c. Plaintiff's Evidence**

7 Well in advance of trial, Plaintiff submitted two identical binders consisting of
8 fourteen exhibits and the following exhibit list:

- 9
- 10 • Exhibit 1: Voluntary Petition for Individuals Filing for Bankruptcy (Partial)
 - 11 • Exhibit 2: Relevant list of Unsecured Creditors
 - 12 • Exhibit 3: Bankruptcy Schedule I – Your Income
 - 13 • Exhibit 4: Bankruptcy Schedule J – Your Expenses
 - 14 • Exhibit 5: Jonathan Club Billing Statement for Kevin J. Quinn
 - 15 • Exhibit 6: Checks issued to Kevin J. Quinn for his entities in 2017
 - 16 • Exhibit 7: Checks issued to Kevin J. Quinn for his entities in 2018 and one
17 in 2019
 - 18 • Exhibit 8: \$7,500.00 check issued to Kevin Quinn on February 11, 2018
 - 19 • Exhibit 9: Four checks issued to Kevin Quinn in 2017
 - 20 • Exhibit 10: Description of Kevin J. Quinn's Financial Assets, Part 4 of
21 Bankruptcy documents
 - 22 • Exhibit 11: Wells Fargo Preferred Checking Statements for Account #-29²
23 (the "Disclosed Bank Account")
 - 24 • Exhibit 12: Wells Fargo Way2Save Savings Account #-86³ (the
25 "Undisclosed Bank Account")
 - 26 • Exhibit 13: Three checks issued to Kevin Quinn
 - 27 • Exhibit 14: Schedule C – Profits or Loss From Business 2017

28 Debtor did not object to the introduction of these exhibits into evidence, so they
are deemed admitted.

Those exhibits reveal, in relevant part, that Debtor had a second, undisclosed
bank account that he used on a near daily basis in the months leading up to and
following his bankruptcy filing (Ex. 12). Those exhibits also reveal that the sum total of
deposits and withdrawals in the Undisclosed Bank Account and Disclosed Bank

² The full account number is being omitted to protect the security of that account.

³ The full account number is being omitted to protect the security of that account.

Account for the six months leading up to Debtor's bankruptcy filing greatly exceeded the figures Debtor disclosed in Schedules I & J⁴ (Ex. 3, 4, 11 & 12):

Scheduled Income	\$3,818	Scheduled Expenses	\$5,111
Average Monthly Deposits, 6 Months Prepetition, Disclosed Bank Account	\$9,569.38	Average Monthly Withdrawals, 6 Months Pre-Petition, Disclosed Bank Account	\$9,628.96
Average Monthly Deposits, 6 Months Prepetition, Undisclosed Bank Account	\$5,445.62	Average Monthly Withdrawals, 6 Months Prepetition, Undisclosed Bank Account	\$5,412.78

The same documents reveal that the sum total of deposits in the Disclosed Account for the calendar year 2017 was \$61,443.80. Ex. 11. But Debtor failed to disclose any income for that year (or the prior year) in his SOFA. Dkt. 1, PDF p.45, para. "(4)" and "(5)".

Plaintiff's evidence also reveals that Debtor was a member of an exclusive club called the Jonathan Club (Ex. 5), both before and after filing bankruptcy, had an outstanding balance of \$1,034.73 as of the petition date (Ex. 5, Dkt. 1, PDF pp.29-31),⁵ did not schedule Jonathan Club's unsecured claim in his bankruptcy schedules (Dkt. 1, Schedules E/F, PDF pp.29-31), and paid Jonathan Club's claim in full less than six weeks after filing for bankruptcy. Ex. 5, April 2018 Statement. In addition, Plaintiff's evidence reveals that the \$350 figure Debtor provided in Schedule J for his monthly entertainment was well below Debtor's actual monthly expenditures at the Jonathan Club alone. Ex.5.

⁴ The bank statements for the Disclosed Bank Account and Undisclosed Bank Account reflect several transfers to and from both accounts, but the sum total of deposits and withdrawals still greatly exceeds the income and expenses Debtor disclosed in Schedules I & J.

⁵ Plaintiff did not bates stamp his exhibits, but this Bankruptcy Court relies on the Jonathan Club statements for February and March 2018, which show a balance owing to Jonathan Club of \$1,034.73 as of March 1, 2018.

Debtor has not offered any argument or evidence to explain these discrepancies.

2. JURISDICTION, AUTHORITY, AND VENUE

This Bankruptcy Court has jurisdiction, and venue is proper, under 28 U.S.C. §§ 1334 and 1408. This Bankruptcy Court has the authority to enter a final judgment or order under 28 U.S.C. § 157(b)(2)(J). *See generally Stern v. Marshall*, 131 S. Ct. 2594 (2011); *In re AWTR Liquidation, Inc.*, 547 B.R. 831 (Bankr. C.D. Cal. 2016) (discussing *Stern*); *In re Deitz*, 469 B.R. 11 (9th Cir. BAP 2012) (same). Alternatively, the parties have expressly (adv. dkt. 1, ¶7; adv. dkt. 14 § G) and implicitly consented to this Bankruptcy Court's entry of a final judgment or order. *See Wellness Intern. Network, Ltd. v. Sharif*, 135 S.Ct. 1932 (2015); and see *In re Pringle*, 495 B.R. 447 (9th Cir. BAP 2013). *See also* Rules 7008 & 7012(b) (Fed. R. Bankr. P.); LBR 9013-1(c)(5)&(f)(3).

3. DISCUSSION

In general, the bankruptcy court must grant a discharge to an individual chapter 7 debtor unless one of the twelve enumerated grounds in 11 U.S.C. § 727(a) is satisfied. A claim for denial of a debtor's discharge under § 727 is construed liberally in favor of the discharge and strictly against a person objecting to the discharge. *In re Roberts*, 331 B.R. 876, 882 (9th Cir. BAP 2005). The objecting party bears the burden to prove by a preponderance of the evidence that the debtor's discharge should be denied. *In re Retz*, 606 F.3d 1189, 1196 (9th Cir. 2010).

a. Section 727(a)(3)

Section 727(a)(3) states: "[t]he court shall grant the debtor a discharge, unless ... the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case." 11 U.S.C. § 727(a)(3).

"A creditor states a prima facie case under § 727(a)(3) by showing (1) that the debtor failed to maintain and preserve adequate records, and (2) that such failure

1 makes it impossible to ascertain the debtor's financial condition and material business
2 transactions." *In re Caneva*, 550 F.3d 755, 761 (9th Cir. 2008).

3 In this case, Plaintiff has not presented any evidence establishing that Debtor
4 has failed to maintain and preserve adequate records for either his disclosed or alleged
5 undisclosed business(es) or any evidence establishing that it would be impossible to
6 ascertain Debtor's financial condition. Therefore, Plaintiff has failed to carry his burden
7 of proof under § 727(a)(3).

8 This Court will enter judgment in Debtor's favor and against Plaintiff as to this
9 claim.

10 **b. Section 727(a)(4)(A)**

11 Section 727(a)(4)(A) states: "[t]he court shall grant the debtor a discharge, unless
12 ... the debtor knowingly and fraudulently, in or in connection with the case[,] made a
13 false oath or account." 11 U.S.C. § 727(a)(4)(A). "The fundamental purpose of
14 § 727(a)(4)(A) is to insure that the trustee and creditors have accurate information
15 without having to conduct costly investigations." *In re Khalil*, 379 B.R. 163, 172 (9th Cir.
16 BAP 2007), *aff'd*, 578 F.3d 1167 (9th Cir. 2009) (internal citations omitted). "[T]he
17 opportunity to obtain a fresh start is ... conditioned upon truthful disclosure." *In re Wills*,
18 243 B.R. 58, 63 (9th Cir. BAP 1999).

19 In order to prevail on a § 727(a)(4)(A) claim, "a plaintiff must show by a
20 preponderance of the evidence, that: '(1) the debtor made a false oath in connection
21 with the case; (2) the oath related to a material fact; (3) the oath was made knowingly;
22 and (4) the oath was made fraudulently.'" *In re Retz*, 606 F.3d 1189, 1197 (internal
23 citations omitted).

24 **(i) Debtor made false oaths in connection with the case**

25 "A false statement or an omission in the debtor's bankruptcy schedules or
26 statement of financial affairs can constitute a false oath." *In re Khalil*, 379 B.R. 163,
27 172. "A false oath is complete when made." *In re Searles*, 317 B.R. 368, 377 (9th Cir.
28 BAP 2004), *aff'd*, 212 F. App'x 589 (9th Cir. 2006).

1 In this case, Plaintiff's evidence establishes that Debtor omitted and/or failed to
2 disclose his second bank account (#-86). Ex.10 & 12. Plaintiff's evidence also
3 establishes that Debtor significantly understated his income and expenses in his
4 Schedules I & J (Ex. 3, 4, 11, 12) and omitted income on his SOFA for the 2016 and
5 2017 calendar years. Ex. 11, 12 & Dkt. 1, PDF p.45, para. "(4)" and "(5)".⁶ Plaintiff's
6 evidence also establishes that Debtor omitted the pre-petition claim of Jonathan club.
7 Ex. 5, Dkt. 1, PDF pp.29-31.⁷

8 This element is satisfied.

9 **(ii) Debtor's false oaths related to material facts**

10 "A fact is material if it bears a relationship to the debtor's business transactions or
11 estate, or concerns the discovery of assets, business dealings, or to the existence and
12 disposition of the debtor's property." *In re Khalil*, 379 B.R. 163, 173 (internal quotation
13 and citation omitted). "An omission or misstatement that detrimentally affects
14 administration of the estate is material." *In re Retz*, 606 F.3d 1189, 1198 (internal
15 quotation and citation omitted). "A false statement or omission may be material even in
16 the absence of direct financial prejudice to creditors." *In re Roberts*, 331 B.R. 876, 883
17 (9th Cir. BAP 2005). "Even if the debtor can show that the assets were of little value or
18 that a full and truthful answer would not have directly increased the estate assets, a
19 discharge may be denied if the omission adversely affects the trustee's or creditors'
20 ability to discover other assets or to fully investigate the debtor's pre-bankruptcy dealing
21 and financial condition." Collier on Bankruptcy, ¶ 727.04 (16th 2020).

22 Debtor's misstatements and omissions related directly to his assets and pre-
23 petition income, and detrimentally affected the trustee's ability to efficiently administer
24 Debtor's estate.

25 This element is satisfied.

26 ⁶ To the extent necessary, this Bankruptcy Court takes judicial notice of Debtor's petition, Schedules and
27 Statement of Financial Affairs pursuant to Rule 201 (Fed. R. Evid.).

28 ⁷ Plaintiff did not bates stamp his exhibits, but this Bankruptcy Court relies on the Jonathan Club
statements for February and March 2018, which show a balance owing to Jonathan Club of \$1,034.73 as
of March 1, 2018.

1 **(iii) Debtor's false oaths were made knowingly**

2 “A debtor acts knowingly if he or she acts deliberately and consciously.” *In re*
3 *Retz*, 606 F.3d 1189, 1198 (internal quotation and citation omitted). A Debtor may act
4 knowingly if the debtor “deliberately and consciously signs the schedules and
5 statements declaring that they are true and correct, and subsequently affirms the
6 schedules and statements knowing that they are incomplete.” *In re Anthonys*, 539 B.R.
7 829, 832 (Bankr. D. Alaska 2015).

8 Debtor signed his Schedules and SOFA, declaring them to be true and correct.
9 Dkt. 1, PDF pp. 43 & 55. Additionally, Debtor made a blanket denial of Plaintiff's
10 allegations in the Complaint that Debtor understated his income and expenses (Adv.
11 Dkt. 5, p.1:4-6) and Debtor has not amended his Schedules or SOFA. But based on
12 this Bankruptcy Court's review of Debtor's bank statements, which reflect near daily use
13 of both bank accounts and significantly higher deposits and withdrawals than the
14 amounts disclosed in Debtor's Schedules I & J and on his SOFA (Ex. 3, 4, 11, 12 & Dkt.
15 1, PDF p.45, para. “(4)” and “(5)”), this Court cannot conclude under any standard that
16 Debtor acted anything less than knowingly. Similarly, given Debtor's frequent visits to
17 the Jonathan Club, both pre- and post-petition (Ex. 5), and his payment of its claim in
18 full shortly after filing his petition, it is not remotely plausible that Debtor simply forgot to
19 schedule Jonathan Club's claim along with Debtor's other general unsecured creditors.

20 This element is satisfied.

21 **(iv) Debtor's false oaths were made fraudulently**

22 “[A] debtor acts with fraudulent intent when: (1) the debtor makes a
23 misrepresentation; (2) that at the time he or she knew was false; and (3) with the
24 intention and purpose of deceiving creditors.” “A debtor acts fraudulently if at the time
25 he or she made the representation he or she knew they were false and made them with
26 the intention and purpose of deceiving creditors.” *In re Retz*, 606 F.3d 1189, 1198-99
27 (internal quotation and citations omitted). “Intent is usually proven by circumstantial
28 evidence or by inferences drawn from the debtor's conduct.” *Id.* at 1199 (citations

1 omitted). “Reckless indifference or disregard for the truth may be circumstantial
2 evidence of intent, but is not sufficient, alone, to constitute fraudulent intent.” *Id.* (citing
3 *In re Khalil*, 379 B.R. 163, 173-75). “The inclusion of a significant number of falsehoods
4 and omissions in schedules and statements, and the failure of the debtor to correct such
5 falsehoods and omissions by amending his schedules and statements within a
6 reasonable amount of time can constitute reckless indifference to the truth.” *Id.*

7 For the same reasons discussed above, this Bankruptcy Court finds and
8 concludes that Debtor acted with fraudulent intent when he made the false oaths
9 described above. In addition, Debtor’s willingness to claim that his wife had “stage 4
10 pancreatic cancer and was given last rights” in response to Plaintiff’s reasonable
11 request for an update on when he could expect to receive payment on his judgment,
12 which Debtor admits was not true (Adv. Dkt. 25, pp.2:18-3:3), establishes both that
13 Debtor has a propensity to lie and that he was willing to deceive Plaintiff to frustrate his
14 collection efforts. Debtor’s pattern of deception continued into this case when he
15 knowingly made false oaths about his financial condition to mislead the Trustee and
16 creditors and discharge unfriendly debts.

17 This element is satisfied. Therefore, Plaintiff has satisfied each of the required
18 elements under § 727(a)(4)(A) by a preponderance of the evidence – indeed, by clear
19 and convincing evidence, if that were required.

20 This Court will enter judgment in favor of Plaintiff and against Debtor as to this
21 claim.

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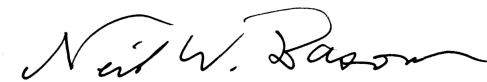
1 **4. CONCLUSION**

2 For the reasons set forth above, this Bankruptcy Court finds and concludes that
3 Plaintiff has carried his burden of proof by a preponderance of the evidence to
4 demonstrate that Debtor is not entitled to a discharge. Accordingly, Debtor's discharge
5 is denied under 11 U.S.C. § 727(a)(4)(A).

6 This Court is concurrently issuing an appropriate judgment implementing the
7 foregoing memorandum decision.

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24 Date: March 1, 2021


Neil W. Bason
United States Bankruptcy Judge

CERTIFICATE OF SERVICE

I, the below-named deputy clerk of the United States Bankruptcy Court, certify that I placed a true and correct copy of the attached document in a sealed envelope for collection and mailing, no later than the next business day that is not a court-observed holiday, in the United States mail, first class, postage prepaid, and addressed as follows:

Plaintiff

James T Duff
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Rosemead, CA 91770

☐ Service information continued on attached page

Date: 3/1/2021 Signature: /s/ Sharon Sumlin

Deputy Clerk [*printed name*]: Sharon Sumlin